

REMARKS

This responds to the Office Action dated September 28, 2005.

Claims 1-25 are presently pending in this application. No claims have been amended with this Response to Final. The present status of the claims are presented above.

§103 Rejection of the Claims

Claims 1-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jin et al. (U.S. 6,917,617) in view of Comer (“Internetworking with TCP/IP Volume 1, Principle, Protocols, and Architecture.”). It is of course fundamental that in order to sustain an obviousness rejection that each and every element of the rejected claims must be taught or suggested in the proposed combination of references. In addition, there must be some motivation to combine the proposed references in the manner proposed by the Examiner by one of ordinary skill in the art to achieve the combination.

First, Applicants would like to point out that the original filed specification provides several beneficial reasons and corresponding rationales that explain why including a QoS indication in an IP address is different from including a QoS indication in a network packet’s header. For example, the Examiner’s attention is directed to the original filed Summary of Invention, first paragraph, and on page 7. There it is stated that by using the IP address for QoS, additional space in the packet header is not needed. Moreover, processing time is improved for making QoS reservations and for creating QoS tunnels through the Internet by not including QoS indications in the packet header.

Second, as the Examiner has pointed out in the Final Office Action, the Jin reference fails to teach a QoS code that becomes part of the IP address and that is defined in unused portions of the IP address. However, the Examiner attempts to explain this away by citing a reference in Jin where it is stated “the particular bits used are not particularly critical.” Jin, col. 3, lines 35-46.

If Jin is suggesting by the cited passage that it is of no import that the QoS indication is included in a packet header or in an IP address, as the Examiner appears to suggest, then the Applicants respectfully disagree with this assertion. Again, the Examiner is invited to review

Applicants' original filed specification where the benefits and rationales for including the QoS code in the IP address are enumerated and explained.

If Jin failed to recognize this significance by indicating it was not critical, then Jin failed to appreciate significant teachings of Applicants' invention which provide novelty; and this demonstrates that Jin would not have motivated one of ordinary skill in the art to combine with Comer, in the manner suggested by the Examiner, because by the Examiner's own admission Jin appears to suggest that where (location) the bits are placed are not critical. If this is in fact the case, then one of ordinary skill in the art would have read Jin and had no motivation to change the bits and their locations at all; irrespective of the Comer reference. That is, if the Examiner is asserting that the bit locations are not of import and that Jin states as much; then there would be no motivation to combine Jin with Comer; no motivation to even modify the bits as defined in Jin; and the Jin reference would teach away from Applicants' invention since Applicants' invention has asserted there is significance as to where the QoS code is placed, which is a direct contradiction to the statements of the Jin reference.

Third, Applicants believe that Jin is in fact stating that the exact subset of bits from a packet header that is used for the QoS level is not significant and not that Jin states that the location of the bits can be acquired from the packet header or the IP address. *Emphasis added.* That is, Jin states the exact bits available within a packet header for use as the QoS level is irrelevant; Jin does not state or even suggest that the bits can be acquired from somewhere or anywhere else but the packet header. *Emphasis added.* The QoS level is defined within the packet header of Jin; this is taught throughout the reference and is emphasized. There is not a single suggestion in Jin where it can be asserted that the QoS level may be included within an IP address.

Fourth, the Comer reference is a survey of networking and does not present any new or novel techniques. That is to say, Comer is a publication that explains networking topics to readers or students; it is a teaching guide about existing network technology. Comer shows one class of IP addresses where some bits are reserved for future use, namely Class E IP addresses. There is no further exposition about Class E IP addresses in the Comer reference.

One of ordinary skill in the art would not have gleaned anything new from the Comer reference when reading it in view of Jin. Moreover, Jin specifically discourages any motivation

to change where the bits are located for its QoS level by stating location is irrelevant. Therefore, Applicants respectfully assert that there is no motivation to combine the teaching in Jin with a text book of networking (Comer) to completely alter where Jin stores its QoS level and to do so could have only been achieved via improper hindsight after reading and comprehending Applicants' invention. Jin discourages one from looking for alternative locations for its QoS level bits outside the packet header and Comer provides no suggestion that Class E IP addresses may be used for QoS. Thus, Applicants respectfully assert that the proposed combination of Comer and Jin lacks the teachings of including an QoS code as part of the IP address and one of ordinary skill in the art would not have been motivated to combine Comer and Jin in the manner the Examiner has suggested without improper hindsight after first having read and comprehended Applicants' disclosure. Furthermore, since Comer is an instructional guide about basic networking, Applicants find it highly unlikely that one of ordinary skill in the art would even have read Comer, since presumably this information is known or readily available to one of ordinary skill in the art as background material.

Therefore, Applicants respectfully request that the rejections be reconsidered, withdrawn, and that the claims be allowed.

Claims 23-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jin et al. in view of Comer, further in view of Ohba (U.S. 6,101,193). Again, to sustain an obviousness rejection each and every element must be taught or suggested in the proposed combination of references and motivation must be present to make the proposed combination.

The remarks presented above are equally valid with this rejection and are thus incorporated by reference herein. Additionally, The Examiner appears to suggest that motivation exists from Jin to alter where the bits are acquired because Jin teaches it is irrelevant where the bits for the QoS level are obtained. Jin teaches using bits available from the packet header; the packet header is not the IP address. So, Applicants fail to see how one of ordinary skill in the art would be motivated to use any bits that fall outside the scope of the packet header. Additionally, because Jin states it is not critical, Applicants respectfully assert this takes motivation away from attempting to find alternative locations. That is, one of ordinary skill in the art would have no motivation to look beyond unused bits of the packet header because Jin asserts where they are

acquired is not critical. Thus, there may be motivation to use different unused bits within the packet header if the bits suggested by Jin were being used by one of ordinary skill in the art; but there is no motivation to go outside the packet header to the IP address, since using bits from the IP address is not something that is typically done in the art. *Emphasis added.* Use of the bits from the IP address for a QoS code is in fact non-standard.

Therefore, Applicants assert the motivation the Examiner asserts would be present when the bits proposed by Jin were being used and that other unused bits within the header would be used. There is no motivation to use a non-standard set of bits included within the IP address. Furthermore, the generic network teaching reference of Comer does not supply this motivation because it teaches standard and known networking techniques as a learning tool. In fact, Applicants respectfully assert that the motivation is only available after one of ordinary skill in the art reads and comprehends Applicants' invention where a non standard use of unused bits for an IP address is used for a QoS code.

Accordingly, the rejections with respect to the claims 23-25 should be withdrawn and the claims allowed. Applicants respectfully request an indication of the same.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

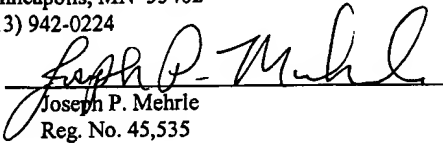
MONTY SHARMA ET AL.

By their Representatives,

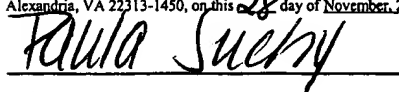
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Date 11-28-05

By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28 day of November, 2005.



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